

Members

Sen. Joseph Zakas, Chairperson
Sen. Connie Lawson
Sen. Rose Ann Antich
Rep. Jonathan Weinzapfel, Vice-Chairperson
Rep. Ed Mahern
Rep. Ralph Foley
Mr. James W. Martin
Ms. Cynthia Boll
Mr. Vincent Heiny
Mr. Robert Christopher
Ms. Janet Ellis
Mr. Terry Harris
Ms. Diane Bender
Mr. John Chappell



PROBATE CODE STUDY COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

LSA Staff:

Ann Haley, Attorney for the Commission
Susan Preble, Fiscal Analyst for the Commission

Authority: IC 2-5-16-3

MEETING MINUTES¹

Meeting Date: October 19, 1999
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 128
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Joseph Zakas, Chairperson; Sen. Connie Lawson; Sen. Rose Ann Antich; Rep. Jonathan Weinzapfel, Vice-Chairperson; Rep. Ed Mahern; Rep. Ralph Foley; Mr. James W. Martin; Ms. Cynthia Boll; Mr. Vincent Heiny; Mr. Robert Christopher; Ms. Janet Ellis; Ms. Diane Bender.

Members Absent: Mr. John Chappell; Mr. Terry Harris.

The meeting convened at 1:10 p.m. The Commission voted 12-0 to recommend several preliminary drafts (PDs) of legislation. The drafts (see Exhibits 1 through 10) were prepared from legislation recommended by the Commission last year that were not adopted during the 1999 first regular session of the General Assembly:

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- (1) PD 3258: Various probate and trust matters.
- (2) PD 3259: Probate notices and hearings.
- (3) PD 3262: Valuation for inheritance tax purposes.
- (4) PD 3264: Inheritance tax affidavit.
- (5) PD 3266: Investments by fiduciaries.
- (6) PD 3267: Various probate deadlines.
- (7) PD 3269: Inheritance, estate, and transfer tax due dates.
- (8) PD 3277: Charitable trusts.
- (9) PD 3282: Inheritance tax deduction for family business.
- (10) PD 3286: Exceptions to the dead man's statute.²

The Commission discussed the following Preliminary Drafts that were based on initiatives of the Probate Trust and Real Property Section of the Indiana Bar Association:

- (1) PD 3347: Power of attorney penalties (Exhibit 11).

The Commission concluded that while it supported the concept of the draft, more discussion and input was needed as to the language. The Commission indicated that the draft should not apply to a power of attorney for healthcare purposes. The Commission decided not to vote on PD 3347. However the Commission voted 12-0 to make the following recommendation:

" The Commission endorses the enforcement of penalties for unreasonable refusal to honor the authority of an attorney in fact under a power of attorney, excluding a power of attorney for healthcare purposes."

- (2) PD 3285: Applicability of the dead man's statute (Exhibit 12).

The Commission discussed how the language of PD 3285, while addressing the same subject that PD 3286 addresses, is more specific than the language of PD 3286.³ The Commission discussed the problem that these drafts address. Since credit card companies, as recordkeepers, are disqualified under the dead man's statute from testifying, the companies are unable to prove their claims against an estate. The Commission indicated that it preferred the more specific language of PD 3285. The Commission voted 12-0 to withdraw its recommendation from PD 3286. The Commission voted 12-0 to recommend PD 3285.

- (3) PD 3287: Power of attorney accounting (Exhibit 13).

The Commission indicated that this would make it clear that a court can order an accounting. The Commission voted 12-0 to adopt PD 3287.

- (4) PD 3289: Construction of nonprobate transfers (Exhibit 14).

The Commission discussed how the draft places provisions similar to those in the probate

² Preliminary Draft 3286 concerning exceptions to the dead man's statute was recommended by the Commission, but the Commission voted unanimously to withdraw its recommendation and adopt instead Preliminary Draft 3285 concerning the dead man's statute. A discussion of Preliminary Draft 3285 follows in these minutes.

³ See footnote 2.

code into the trust code for the purpose of providing guidance in using the trust code. The Commission discussed how IC 30-4-1-9 of the draft requires a trust to specifically give the power of appointment. The Commission concluded that IC 30-4-1-10 of the draft needed to be amended to clarify that the distribution is to be made as if the designated ancestor died intestate without a spouse. The Commission voted 11-0 to amend the language on lines 23 through 25 of the draft to read: ". . . in such shares they would receive, under the applicable law of intestate succession, as if the designated ancestor had then died intestate, unmarried and owning the subject matter of the distribution.". The Commission voted 11-0 to recommend the draft as amended. Sen. Zakas suggested that the subject of living trusts be studied by the Commission next year, so that more comprehensive legislative may be prepared to address concerns in this area. Sen. Zakas urged members to review PD 3289, and suggest any changes to the LSA attorney for the Commission.

(5) PD 3392: Creditor's rights against nonprobate transfers (Exhibit 15).

The Commission discussed how this draft would allow creditors to reach more nonprobate transfers such as brokerage accounts, life insurance benefits, qualified retirement benefits and individual retirement accounts. Mr. John Gerni, Lincoln Life Insurance Company, stated that he would get the insurance advisory board's opinion on Preliminary Draft 3392. The Commission decided not to vote on PD 3392. The Commission voted 11-0 to recommend only the concept that the issue of creditor's rights against nonprobate transfers needs to be addressed.

The Commission also discussed the following draft prepared by Rep. Foley from legislation recommended by the Commission in 1997:

PD 3457: Inheritance by childless spouse (Exhibit 16).

Ms. Diane Bender indicated that while she supports section 1 of the draft which gives the spouse of a decedent who died intestate a one-fourth interest in land of the deceased spouse instead of the current life estate in one-third of the land of the deceased, she does not support section two of the draft which gives the spouse a one-fourth interest in land where the spouse is electing against the will. Ms. Bender explained a situation concerning a client who owned a family farm and married in later years without a prenuptial agreement. The widow elected against the will. When the widow's life estate extinguished upon her death, the farm went to the client's grandchildren. Under PD 3457, the land would go to the nieces and nephews of the widow who are unrelated to the client. The Commission discussed how the current law is a source of stress for the decedent's family, because the house must be sold and the proceeds divided, or the spouse may live in the residence and pay two-thirds of the fair market value of the rent to the remaindermen. The point was raised that if the spouse was married to the decedent for some time, the spouse should be entitled to a one-fourth interest in land. The Commission also discussed how other states use a formula for determining the spouse's share in electing against the will that takes into account the years the spouse was married to the decedent. A motion to remove section two of the draft concerning election of the will, failed on a Commission vote of 4-6. A motion to recommend PD 3457 failed on a vote of 7-4.⁴

The meeting adjourned at 3:15 p.m..

⁴ Although a majority of Commission members present voted in favor of the draft, a quorum of the members did not vote in favor of the draft as required under IC 2-5-16-5.5.